

**REMARKS – General**

*Examiner Interview:*

Applicant kindly thanks the Examiner for his time during an interview on December 4, 2009. During the interview, Applicant and Examiner discussed Applicant's argument that the combination of Plotnick and Swix, cited in the rejection under 35 USC §103(a), teaches away from Applicant's invention. The Examiner agreed with Applicant is that the combination of Plotnick and Swix teaches away from Applicant's invention as recited in its independent claims. The Examiner indicated that an additional prior art search may be required.

*Claim Rejections under 35 USC §103:*

The most recent Office Action (OA) rejects claims 1, 4, 5, 7-10, 13, 18-25, 27-32, 37, 38, 41-43, and 48-50 as being obvious in view of Plotnick et al., US Published Patent Application No. 2002/0184047, hereinafter "Plotnick," combined with Swix et al., US Published Patent Application No. 2004/0163101, hereinafter "Swix." Applicant respectfully traverses this rejection.

As discussed in the interview, Applicant's independent claims recite "...determining content previously ordered or viewed by the user and, in a queue of available barker advertisements, removing unviewed barker advertisements corresponding to the content previously ordered or viewed by the user..."

Plotnick fails to teach this step. As set forth in the Plotnick at paragraphs [0061] and [0081], and as acknowledged by the Examiner at page four of the Final Office Action, Plotnick fails to teach determining content previously ordered or viewed by a user, and removing from a queue unviewed barker advertisements corresponding to content previously viewed by the user.

The addition of Swix does nothing to correct this deficiency. The Examiner submits in the Final Office Action that Swix teaches this limitation at paragraph [0066]. Paragraph [0066] of Swix states, in relevant part, "Also, to save cache capacity, preferably, head end 110 initially screens the advertisements that are to be loaded ahead of time on the set-top box and removes the advertisements that would not appeal to that

specific subscriber whatsoever. For example, advertisements for women's wear would be removed from delivery to a male-only household."

Thus, the teaching of Swix, when combined with Plotnick, both fails to teach and teaches away from Applicant's invention as recited in its independent claims. Applicant's invention recites that unviewed barker advertisements "...related to previously ordered or viewed content..." are removed from the queue. The advertisements of Swix "that would not appeal to [a] specific subscriber whatsoever," when combined with Plotnick, teaches away from "previously ordered or viewed content" because people do not order or view content "that would not appeal" to them "whatsoever."

As discussed in the interview, the combination of Plotnick and Swix both fails to teach and teaches away from Applicant's invention. Applicant therefore respectfully submits that the rejection is overcome. Applicant respectfully requests reconsideration of the rejection in light of these comments.

The OA rejects claim 11 as being unpatentable under 35 USC §103 in view of Plotnick, Swix, and Knudson et al., US Published Patent Application No. 2003/0110499, hereinafter "Knudson." Applicant respectfully traverses the rejection.

Applicant has shown above that the combination of Plotnick and Swix fails to teach removal of any unwatched barker advertisements from a queue. Knudson fails to correct this deficiency. Knudson fails to teach a queue of barker advertisements at all. The resulting combination therefore fails to teach each of Applicant's claimed limitations. Accordingly, Applicant respectfully request reconsideration of the rejection in light of the comments above.

Claim 51 is rejected under 35 USC §103(a) as being obvious over Plotnick and Swix, further in view of Sie et al., US Published Pat. Application No. 2004/0030599, hereinafter "Sie." Applicant respectfully traverses this rejection.

Applicant is shown above that the combination of Plotnick and Swix fails to teach removal of any unwatched barker advertisements from a queue. The addition of Sie fails to correct this deficiency.

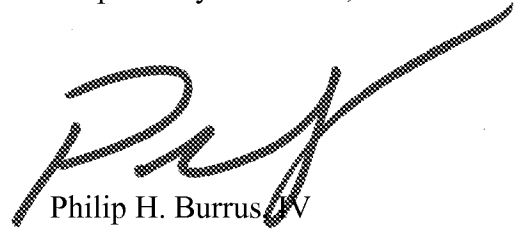
Applicant respectfully notes that Sie fails to teach determining previously viewed content and removing barker advertisements from a queue that correspond to the previously viewed content. Sie teaches away from this as Sie merely teaches thwarting attempts to view commercials already inserted into, and transmitted with, content based upon a user's authorization. Such advertisements are not barkers selected from a queue where some barkers have been removed, as is recited in Applicant's independent claims, from which claim 51 depends. For example, at paragraph [0132], Sie prevents users from viewing advertisements that "...appear in linearly scheduled programs or free VOD (FVOD) programs..." Sie does this, for example, where a user "...would pay for the ability to curtail or eliminate some or all advertising." Sie, paragraph [0133]. Further, when combined with Plotnick and Swix, the resulting combination employing Plotnick's queue teaches only the removal of already viewed advertisements as noted above. There is no reason the teaching of Sie would motivate one to do the opposite of the teaching of Plotnick regarding the queue.

For these reasons, Applicants respectfully submit that the §103 rejection is overcome. Applicants respectfully request reconsideration of the rejection in light of these comments.

**CONCLUSION**

For the above reasons, Applicants believe the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Applicants believe this application is now in condition for allowance, for which they respectfully submit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "PB" followed by a stylized flourish.

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